

## SEC's Division of Enforcement: Changing Landscape for Private Equity

### PENpoints

*As the U.S. Securities and Exchange Commission's Division of Enforcement undergoes the biggest reorganization in decades, the private equity community should prepare for increased scrutiny.*

The Securities and Exchange Commission's Enforcement Division is currently undergoing what has been called the biggest reorganization in at least three decades, which likely will result in increased scrutiny of the private equity community by the Enforcement Division.

The Enforcement Division has recently created five new specialized investigative units concentrated on "high priority" areas of enforcement:

1. Asset Management,
2. Market Abuse,
3. Structured and New Products,
4. Foreign Corrupt Practices Act, and
5. Municipal Securities and Public Pension.

Of particular interest to the private equity community is the Asset Management Unit, the largest of the new units, focusing on investment advisers, investment companies, hedge funds and private equity funds. The SEC commissioners have also sought to streamline the investigatory process by giving the Enforcement Division and its field investigators authority to initiate investigations and issue subpoenas without centralized review, a decision in line with the SEC's goal of faster and more aggressive enforcement. Having publicly staked out private equity as a key area for reform, the Enforcement Division will likely look to issue more subpoenas, accelerate the

investigative process and bring cases promptly within the new Asset Management Unit.

Under the reorganized SEC Enforcement Division, senior officers will have more autonomy and be closer to the investigations, and the internal vetting process for authorizing enforcement actions will be shortened. In addition, the Division has adopted tools similar to those used by criminal law enforcement authorities to secure the cooperation of "insiders" or others who are aware of fraudulent activity, such as cooperation agreements, deferred prosecution agreements and non-prosecution agreements. This will increase pressure on individuals and companies to cooperate with the SEC as early as possible, and make more complicated the analysis of potential conflicts between organizations and their employees.

As the Enforcement Division continues to implement these initiatives, the private equity community should prepare for increased scrutiny in this new and uncertain regulatory environment. To learn more, see Kirkland's January 2010 [Alert](#), discussing these developments in greater detail.

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## PENnotes

**The University of Chicago's 5th Annual Booth Distressed Investing and Restructuring Conference**  
**Chicago, Illinois**  
**April 16, 2010**

The 5th Annual Chicago Booth Distressed Investing and Restructuring Conference, presented by the University of Chicago's Booth School of Business, will provide a broad overview of the state of the distressed investing and restructuring industry to professionals from around the country. Kirkland partner Jack S. Levin, P.C., will speak at this event and moderate a panel. Partners James H.M. Sprayregen, P.C., and Nicole L. Greenblatt will also participate as panelists.

**The NYCBA's 7th Annual Institute on Tax Aspects of Mergers and Acquisitions**  
**New York, New York**  
**April 22, 2010**

Kirkland partner Patrick C. Gallagher will speak on "Private Equity, Venture Capital and LBOs" at the New York City Bar Association's 7th Annual Institute on Tax Aspects of Mergers and Acquisitions.

**The 30th Annual Ray Garrett Jr. Corporate and Securities Law Institute**  
**Chicago, Illinois**  
**April 29 - 30, 2010**

The 30th Annual Ray Garrett Jr. Corporate and Securities Law Institute will take place from April 29 - April 30, 2010, in Chicago. More than 400 law firm and in-house attorneys will come together for a discussion of current issues including the capital markets today, financing and the return of the equity market, regulatory reform and the M&A market. Kirkland partner R. Scott Falk, P.C., will chair a session on "The Thawing of the M&A Market."

**Infoline's Private Equity Regulation & Compliance Conference**  
**London, UK**  
**May 25, 2010**

This Infoline conference will provide a practical update on regulatory and compliance developments for private equity firms. Kirkland partners Lisa Cawley and Stephanie Biggs will speak on "An Overview of U.S. Changes in Regulation Impacting Private Equity Firms."

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## Private Equity Practice at Kirkland & Ellis

Kirkland & Ellis LLP's nearly 400 private equity attorneys handle leveraged buyouts, growth equity transactions, recapitalizations, going-private transactions and the formation of private equity, venture capital and hedge funds on behalf of more than 200 private equity firms around the world.

Kirkland has been widely recognized for its preeminent private equity practice. Kirkland received the 2009 and 2008 awards for Best Law Firm (Private Equity Deals) from *Private Equity International*. Mergermarket has ranked Kirkland first by volume for North American Buyouts and Exits in its "North American Private Equity in Review for 2009," and Pitchbook named Kirkland as one of the most active law firms representing private equity firms in its "Private Equity Breakdown" in 2009.

*The Lawyer* magazine recognized Kirkland as one of the "The Transatlantic Elite" in 2008 and 2009, noting that the firm is "leading the transatlantic market for the provision of top-end transactional services ... on the basis of a stellar client base, regular roles on top deals, market-leading finances and the cream of the legal market talent."

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